IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.14017 of 2004

Between:

1. The Divisional Forest Officer, Wildlife,

Atmakur, Kurnool District.
2. The Forest Range Officer, Nagaluty Range,

Atmakur Forest Division,
Kurnool District.

..... PETITIONERS

AND

A. Ahammad Hussain, s/o Masum Sab,
Aged 64 years, R/o Atmakur Village and Mandal,

Kurnool District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction more particularly one in the nature of "writ of certiorari" calling for the records relating to the order passed in Crl.A.No.114 of 2002 dated 17-02-2004 by the II Additional Sessions Judge, Kurnool and set aside the same as illegal, arbitrary without jurisdiction and against the facts on records.

Counsel for the Petitioners: GP FOR FORESTS

Counsel for the Respondent: ----------

The Court made the following:

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14017 OF 2004

ORDER:

The Divisional Forest Officer (Wildlife), Atmakur and Forest Range Officer, Atmakur Forest Division of Kurnool District are the petitioners in this writ petition filed under Article 226 of the Constitution of India. They filed the writ petition praying this Court to issue a writ of certiorari to quash the judgment dated 17.02.2004 in Criminal Appeal No.114 of 2002 passed by the Court of II Additional Sessions Judge, Kurnool.

The brief facts leading to filing of the writ petition may be noticed. The second petitioner found two lorries standing half kilometer away from 400 KV line and one lorry was loaded with Nallamaddi trees, and coolies were felling the trees. Therefore, he registered an offence being O.R.No.18/2000-2001/H5 and seized the lorries bearing No.AP.21U.3866 and AP.21U.4179 and fuel-wood found in one lorry. Action was initiated under Section 44 of A.P.Forest Act, 1967 (for short, the Forest Act) and the second petitioner also recommended for compounding the case for an amount of Rs.1,85,905/- (Rupees One lakh eighty five thousand and nine hundred and five only). The first petitioner issued an order compounding the offence on 03.06.2000 and also directed to confiscate fuel-wood duly releasing the two lorries. The respondent herein filed a Civil Miscellaneous Appeal before the II Additional Sessions Judge, Kurnool, against the orders of the first petitioner dated 03.06.2000.

By judgment dated 27.06.2001, the learned II Additional Sessions Judge set aside the order of the first petitioner and remanded the matter to him with a direction to decide the matter after following the procedure contemplated under Sections 44 and 59 of the Forest Act.

After remand, the first petitioner recorded the statements of the respondent herein, Forest Range Officer Sri M.G.Prabhakar; driver of lorry bearing No.AP.21U.3866 Sri P.Khaleel and driver of lorry bearing No.AP.21U.4179, Sri Shaik Shabber. After considering the statements, Divisional Forest Officer issued notice to the respondent, drivers and cleaners as to why the two lorries and fuel-wood should not be confiscated to the State. An explanation was submitted by the respondent. The first petitioner passed orders on 17.04.2004 under Section 44(2-B) ordering the confiscation of lorries as well as forest produced, which were seized. Aggrieved by the same, the respondent herein preferred an appeal being Criminal Appeal No.114 of 2002 under Section 44(2-E) of the Act, which was partly allowed.

The learned Assistant Government Pleader for Forests submits that the learned Sessions Judge cannot exercise criminal jurisdiction in matters of forest offence. He relied on the judgment of this Court in **Public Prosecutor v Vuda Subramanyam**. He further submits that the learned Sessions Judge has not even considered the order of the first petitioner dated 17.04.2002 and therefore committed an error in partly allowing the appeal of the respondent.

This Court is not able to agree with the submission of the learned Assistant Government Pleader. It is not denied that under Section 44(2-E) of the Forest Act, any person aggrieved by an order passed by the Divisional Forest Officer either under Section 44(2-A) or 44(2-B) of the Forest Act may appeal to the District Court having jurisdiction over the area. A bare perusal of the impugned order would show that, the learned II Additional Sessions Judge has exercised the jurisdiction under Section 44(2-E) and not under Section 374(3) of Code of Criminal Procedure, 1973 (Cr.P.C.). Though the appeal was numbered as Criminal Appeal presumably because the Forest officials registered the case against the respondent as forest offence, the learned II Additional Sessions Judge would not have exercised the appellate jurisdiction in relation to forest offence having regard to Section 372 of Cr.P.C., which is to the effect that no appeal shall lie from any judgment of the Criminal Court unless it is provided by Cr.P.C. An appeal is provided under Section 44(2-E) of the Forest Act and therefore it has to be assumed that the learned Sessions Judge has decided the appeal only in exercise of powers under Section 44(2-E) of the Act.

The learned Sessions Judge considering the various contentions of the respondent and having regard to the fact that the respondent herein was not present at the time of seizure held that the essential element of *mens rea* is absent, and ordered the release of two lorries duly confirming the order of confiscation of fuel-wood. The learned Sessions Judge also imposed penalty of Rs.39,860/- (Rupees thirty nine thousand eight hundred and sixty only) in stead of Rs.1,85,905/- (Rupees one lakh eighty five thousand nine hundred and five only). The learned Sessions Judge also came to a conclusion that the driver of the lorry bearing No.AP.21U.4179 loaded the

fuel-wood not permitted by department without knowledge of the respondent.

Insofar as the second submission is concerned, I do not see any infirmity in the findings recorded by the learned Sessions Judge. It is well settled that if a lower authority or a statutory authority has come to a conclusion after appreciating evidence, ordinarily this Court would not interfere in exercise of the power of judicial review and issue a certiorari to quash a finding of fact. (See **Syed Yakoob v Radhakrishnan)**

Further the respondent herein is only a contractor, who engaged the two lorries for carrying the fuel-wood allowed by the forest officials near 400 KV line. At the time the lorries were seized, the respondent (contractor) or the owners of the lorries were not present and therefore the learned Sessions Judge came to the conclusion that *mens rea* is absent. The learned Sessions Judge also placed reliance on the Division Bench of this Court in **Shaik Gulam Rasool v Government of A.P.,** wherein it was laid down that in the absence of *mens rea* attributable to the owner of the property, confiscatory order should not ordinarily be passed. Therefore, I do not find any grave error on the face of record.

The writ petition is misconceived and is accordingly dismissed.

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(V.V.S.RAO,J)

10.08.2004.

pln

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SECTION OFFICER.

To

1. Two CCs to the Government Pleader for Forests,

High Court of Andhra Pradesh, Hyderabad (O.U.T)

2. Two CD copies.